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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------------------|-------------|----------------------|---------------------|------------------|
| 09/649,484 | 08/28/2000 | Eliot R. Long | 10566/4 | 8431 |
| 757 | 7590 | 03/30/2004 | EXAMINER | |
| GENERAL NUMBER 00757 | | | SOTOMAYOR, JOHN | |
| BRINKS HOFER GILSON & LIONE | | | ART UNIT | |
| P.O. BOX 10395 | | | PAPER NUMBER | |
| CHICAGO, IL 60611 | | | 3714 12 | |

DATE MAILED: 03/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/649,484

Applicant(s)

LONG, ELIOT R.

Examiner

John L. Sotomayor

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-16 and 18-20 is/are rejected.
- 7) ☒ Claim(s) 7 and 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. In response to the amendment filed February 9, 2004, claims 1-20 are pending.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant sets forth in the preamble that the claim is directed toward a method of evaluating group-administered test results, however, the claim does not present a new use step as the result of an evaluation method step causing confusion about the claim and rendering the claim indefinite.

Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant sets forth in the preamble that the claim is directed toward a method of evaluating group-administered test results, however, although the claim sets forth the step of identifying class profiles the claim does not present a method step for a new use based upon the evaluation of class profiles that have been identified causing confusion about the claim and rendering the claim indefinite.

Claims 3-10 are rejected under 35 U.S.C. 112, second paragraph, as they inherit the deficiencies of the parent claims.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

a. A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-6, and 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott et al (US 6,431,875 B1) in view of Stuppy (US 6,146,148).

Regarding claims 1,2 and 11, Elliot et al discloses a testing method in which test results are evaluated on a question-by-question basis against a normal test result from students who are known to have not cheated to identify those students who vary from the norm (Col 18, lines 23-48). Elliot et al discloses that a candidate answer may refer to a team or group of individuals who are validly taking a test in a cooperative manner (Col 4, lines 7-9) and that the term Candidate refers to individuals and cooperative groups throughout the remainder of the referenced patent. Elliot et al also discloses using statistical methods for the analysis of test takers against the normal profile of test takers known not to have cheated for whole groups of

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individuals taking the test (Col 18, lines 15-23). Elliot et al does not specifically disclose that all members of the class included in a normative profile are subject to the direction of a test administrator on a selected test. However, Stuppy teaches developing student profiles on a battery of tests that are subject to the direction of a computer administrator, that tests are scored and norm comparisons are made, and that student results are tracked and managed by the computer administrator (Col 10, lines 41-53). Therefore, it would have been obvious to one of ordinary skill in the art to provide profiles for individuals and groups indicative of performance on the test on a question-by-question basis as disclosed by Elliot et al and that the test takers are subject to a single administrator and scores are compiled and compared against a known test norm and tracked and managed by the computer administrator as taught by Stuppy for the purposes of selecting exceptional or undesirable performance on a set of tests by a group of test takers.

Regarding claims 3,4, and 6, Elliot et al discloses a plurality of statistical methods for analyzing test results against a norm to determine if a test taker has cheated, including reporting the number of decoy questions answered correctly while a low test result is achieved, and the time spent on each question, among others (Col 18, lines 15-35). Elliot et al does not specifically disclose the statistical methods of low correlation with the norm (claim 3) or the number of portions of the student profile that differ from the norm (claims 4 and 6). However, low correlation against a norm is a common and well-used statistical measure and all statistical measures are commonly used against an entire profile to provide a thorough analysis of results for test assessment. Therefore, it would have been obvious to one of ordinary skill in the art at

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the time of invention to derive the statistical methods of low correlation with the norm, or the number of portions of the student profile that differ from the norm.

Regarding claim 5, Elliot et al discloses comparing the difference between an accumulated test taker profile and a norm profile on a question-by-question basis and provides a measure of expected variability of performance both on the test and for future endeavors (Col 18, lines 36-48).

Regarding claim 12, Elliot et al discloses a test deliverer that delivers the same test to a group of test takers to permit normalization of test scores with greater accuracy (Col 17, lines 7-12).

Regarding claims 13,14 and 16, Elliot et al discloses a plurality of statistical methods for analyzing test results against a norm to determine if a test taker has cheated, including reporting the number of decoy questions answered correctly while a low test result is achieved, and the time spent on each question, among others (Col 18, lines 15-35). Elliot et al does not specifically disclose the statistical methods of low correlation with the norm (claim 13) or the number of portions of the student profile that differ from the norm (claims 14 and 16). However, low correlation against a norm is a common and well-used statistical measure and all statistical measures are commonly used against an entire profile to provide a thorough analysis of results for test assessment. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to derive the statistical methods of low correlation with the norm, or the number of portions of the student profile that differ from the norm.

Regarding claim 15, Elliot et al discloses comparing the difference between an accumulated test taker profile and a norm profile on a question-by-question basis and provides a

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measure of expected variability of performance both on the test and for future endeavors (Col 18, lines 36-48).

5. Claims 8 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott et al in view of Stuppy in further view of Mishkin (US 6,377,781 B1).

Regarding claims 8 and 18, Elliot et al does not specifically disclose nor does Stuppy teach determining a class profile from individual profiles. However, Mishkin teaches that individual profiles may be accumulated into larger units as defined by sessions for entire classes and groups of classes, including any sub-grouping desired based upon the number of sessions, taking the same quiz (Col 4, lines 50-60). Therefore, it would have been obvious to one of ordinary skill in the art to provide profiles for individuals and groups indicative of performance on the test on a question-by-question basis as disclosed by Elliot et al and to provide a method for accumulating a class profile from all of the individual profiles in a given class as taught by Mishkin for the purposes of extending statistical analysis for abnormal behavior across an entire grouping of individuals who take a common test.

6. Claims 9,10,19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott et al in view of Stuppy in further view of Siefert (6,386,883 B2).

Regarding claims 9 and 19, Elliot et al/Stuppy does not disclose that the profiles for a class (claim 9) or a sub-group (claim 19) are indicative of expected performance for a particular skill level. However, Siefert teaches a computer assisted education method in which skills required for a student's advancement are basic data required in student profiles (Col 8, lines 55-65). Therefore, it would have been obvious to one of ordinary skill in the art to provide profiles for individuals and groups indicative of performance on the test on a question-by-question basis

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as disclosed by Elliot et al/Stuppy and to view a class or sub-group profile for an indication of expected performance characterized by skill level as taught by Siefert for the purposes of providing an assessment for educators for the expected advancement of a class given the current skill level of the profiles within the class.

Regarding claims 10 and 20, Elliot et al/ Stuppy does not disclose that the profiles for a class (claim 10) or a sub-group (claim 20) are indicative of expected performance for a wide-range of skill levels. However, Siefert teaches a computer assisted education method in which the plurality of skills required for a student's advancement are basic data required in student profiles (Col 8, lines 55-65). Therefore, it would have been obvious to one of ordinary skill in the art to provide profiles for individuals and groups indicative of performance on the test on a question-by-question basis as disclosed by Elliot et al/Stuppy and to view a class or sub-group profile for an indication of expected performance characterized by a plurality of skill levels as taught by Siefert for the purposes of providing an assessment for educators for the expected performance of a plurality of skill levels.

Allowable Subject Matter

7. Claims 7 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not teach or suggest comparing the frequency of successive equal measures of class success in answering the questions on a question-by-question basis as shown in the claims.

Response to Arguments

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Applicant's arguments filed February 9, 2004 have been fully considered but they are not persuasive. With regard to the rejections under 35 USC 112, 2nd Paragraph, the argument set forth by applicant's representative that a comparison step, such as the last method step in claim 1, or an identification step, such as the last step in claim 2, meets the task of an evaluation as required by the definition of a method recited in 35 USC 100, namely "a process, art, or method that includes a new use of a known process..." is not persuasive. Claims 1 and 2 do not recite a new use for the result of the methods recited in these two claims. Simply reciting that two items are compared against one another does not disclose how the result of that comparison is put to a new use. Similarly, simply reciting that something is identified as a result of an analysis does not disclose how the identified property is put to a new use. Thus, the recited methods in claims 1 and 2 are incomplete as they do not show a change, or new use, in the method steps recited in the claims and are still indefinite.

Applicant's argument that the Elliot reference discloses only statistics and profiles for individual test takers and not classes, or groups, of test takers is unpersuasive. In Col 4, lines 7-9 of the reference Elliot et al discloses that "a candidate may actually refer to a team or group of individuals who are validly taking a test in a cooperative...manner." Thus, the statistics and cheating precautions disclosed by Elliot et al are disclosed to be concerned with individuals and groups of individuals. In addition, although one method of testing delivery disclosed by the Elliot et al reference is the Internet, Elliot et al also discloses that the test delivery may be performed across any network (Col 2, lines 42-50) which, in the broadest interpretation of the reference, includes an Intranet. This type of delivery allows the completion of a test instrument by common members of a single corporate entity enclosed behind the firewall of the corporate

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Intranet and includes common testing sites for a corporate entity, thus providing for a team or group of individuals who are taking a test cooperatively. Applicant's argument is not persuasive.

The remainder of applicant's arguments are addressed by the above office action.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to John L Sotomayor whose telephone number is 703-305-4558.

The examiner can normally be reached on 6:30-4:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on 703-308-1806. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jls
March 22, 2004


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